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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/090,888	03/04/2002	David F. Bantz	YOR920010527US1	6489
29683	7590	07/21/2004	EXAMINER	
HARRINGTON & SMITH, LLP 4 RESEARCH DRIVE SHELTON, CT 06484-6212			NI, SUHAN	
			ART UNIT	PAPER NUMBER
			2643	

DATE MAILED: 07/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/090,888

Applicant(s)

BANTZ ET AL.

Examiner

Suhan Ni

Art Unit

2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 06 May 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-14 and 23-37 is/are pending in the application.
- 4a) Of the above claim(s) 30-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-14 and 23-29 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>2</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This communication is responsive to the election filed 05/06/2004.
2. A provisional election was made without traverse to prosecute the invention of Group I, claims 1-14, 23-29. Group II, claims 15-22 are withdrawn from further consideration and cancelled by the applicant, as being drawn to a non-elected invention.
3. Newly submitted claims 30-37 directed to an invention that is independent or distinct from the invention originally claimed. Since applicants will have received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 30-37 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

- (b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.
- (e) The invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

4. Claims 1-4 and 23-29 are rejected under 35 U.S.C. 102(e) as being anticipated by Leenen (U. S. Pat. - 6,229,900).

Regarding claims 1, Leenen discloses a system (Fig. 1) for adjusting audio output, said system comprising: a transmitter unit (14) adapted to be carried by a user and including a memory (60) and a signal transmitter (66, 68, 70); and a sound generating system (16, 18)

comprising a sound generator (22), a signal receiver (22), means (28) for altering a sound signal from the signal generator based upon a signal (44) transmitted by the transmitter to the receiver, and at least one acoustic transducer (34) coupled to the altering means as claimed.

Regarding claims 2-6, Leenen further discloses the system for adjusting audio output, wherein the memory (60) comprises hearing information regarding a user's auditory characteristics and the memory comprises a nonvolatile memory (ROM).

Regarding claims 7-8, Leenen further discloses the system for adjusting audio output, wherein the altering means comprises a processor (28) connected to the signal receiver and the sound generator.

Regarding claims 9-11, Leenen further discloses the system for adjusting audio output, wherein the altering means comprises a second sound generator (22) connected to a first output from the electrical sound signal modifier as claimed.

Regarding claims 12-13, Leenen further discloses the system for adjusting audio output, wherein the electrical sound signal modifier comprises a bandpass filter array (26) as claimed.

Regarding claim 14, Leenen further discloses the system for adjusting audio output, wherein the at least one acoustic transducer comprises speakers (34).

Regarding method claims 23-29, they are similar to claims 1-14 except for being couched in method terminology; such methods would be inherent when the structure is shown in the cited reference.

Conclusion

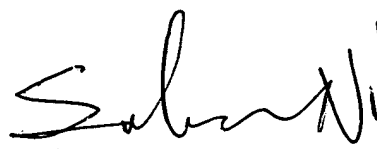
5. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Suhan Ni** whose telephone number is (703)-308-9322, and the number for fax machine is (703)-305-9508. The examiner can normally be reached on Monday through Thursday from 9:00 am to 7:30 pm. If it is necessary, the examiner's supervisor, **Curtis Kuntz**, can be reached at (703) 305-4708.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the group receptionist whose telephone number is (703) 305-3900.

SN

July 11, 2004


SUHAN NI
PRIMARY EXAMINER